Volume 3 | Number 4 Article 2

2-14-1992

Cases, Regulations, and Statutes

Robert P. Achenbach Jr.
Agricultural Law Press, robert@agrilawpress.com

Reporting. As noted, a person making a return of information required under the cash reporting rules must file Form 8300 by the 15th day after the cash is received.[21] In addition, a statement must be furnished to each person whose name is identified in the return by the following January 31.[22]

Penalties. The cash reporting rules are subject to both civil and criminal penalties.[23]

FOOTNOTES

1 Omnibus Budget Reconciliation Act of 1990, Pub.L. 101-508, 104 Stat. 1388-458 (1990).
2 Treas. Reg. § 1.6050I-1, T.D. 8373, 56 Fed. Reg. 57974, Nov. 15, 1991.
3 Temp. Treas. Reg. § 1.6050I-1T, T.D. 8373, 56 Fed. Reg. 57974, Nov. 15, 1991.
4 Treas. Reg. § 1.6050I-1(c)(1)(ii).
5 Treas. Reg. § 1.6050I-1(a)(1).
6 Treas. Reg. § 1.6050I-1(e).
7 Treas. Reg. § 1.6050I-1(c)(1)(i).
8 Treas. Reg. § 1.6050I-1(c)(1)(ii).
9 Treas. Reg. § 1.6050I-1(c)(iii).
10 Treas. Reg. § 1.6050I-1(c)(2).
11 *Id.*
12 Treas. Reg. § 1.6050I-1(c)(3). See I.R.C. § 408(m)(2).
13 *Id.*
14 Treas. Reg. § 1.6050I-1(c)(4).
15 Treas. Reg. § 1.6050I-1(c)(7)(i).
16 Treas. Reg. § 1.6050I-1(c)(7)(ii).
17 *Id.*
18 Treas. Reg. § 1.6050I-1(d)(3).
19 Treas. Reg. § 1.6050I-1(c)(1)(v).
20 Treas. Reg. § 1.6050I-1(c)(1)(vi).
21 Treas. Reg. § 1.6050I-1(e). See Ann. 91-184, I.R.B. 1991-52, 28 (IRS issued revised Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business and Pub. 1544, Reporting Cash Payments of Over $10,000, available in February 1992).
22 Treas. Reg. § 1.6050I-1(f).
23 Treas. Reg. § 1.6050I-1(g).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor was an attorney and after the filing of the case, the state bar initiated disciplinary proceedings against the debtor. The court held that the disciplinary proceedings were excepted from the automatic stay under Section 362(b)(4) as an action by a governmental unit. ***In re* Wade, 948 F.2d 1122 (9th Cir. 1991)**.

AVOIDABLE LIENS. A Chapter 7 debtor sought to avoid the unsecured portion of a lien secured by land valued at less than the amount of the loan secured by the land. The debtor argued that the unsecured portion of the loan was avoidable under Section 506(d) because that portion of the loan was not an "allowed secured claim" as defined by Section 506(a). In a 6-2 decision affirming the Tenth Circuit denial of the avoidance, the U.S. Supreme Court held that "allowed secured claim" in Section 506(d) did not mean the same as determined by Section 506(a) and that the unsecured portion of the claim was not avoidable because the claim was allowed and generally secured. Thus, the Section 506(d) avoidance was limited to claims which were entirely unallowed and unsecured. This position was based upon pre-Bankruptcy Code law which the court used to solve the ambiguity of Section 506 as found in the contrary interpretations argued by the parties to the case. The court held that because the Congress preserved no legislative history to support a change in prior law, the Congress must have intended to retain prior law and the court was required to interpret the "allowed secured claim" language of Section 506(d) as if the prior law remained in effect. **Dewsnup v. Timm, 133 B.R. 13 (yellow) (S. Ct. 1992), *aff'g*, 908 F.2d 588 (10th Cir. 1990), *aff'g*, 87 B.R. 676 (Bankr. Utah 1988)**.

The debtor claimed an exemption, under the Indiana personal property exemption, for a pickup truck used to carry tools for his job as a steelworker. The debtor also sought to avoid a nonpossessory, nonpurchase money lien against the truck under Section 522(f)(2)(B) as a tool of the trade. The court held that although the Indiana exemption did not specifically mention tools of a trade, the general personal property exemption encompassed tools as large as pickup trucks and that the lien was avoidable. ***In re* Stallsworth, 133 B.R. 470 (Bankr. S.D. Ind. 1991)**.

AVOIDABLE TRANSFERS. Within 90 days prior to filing for bankruptcy, the debtor made two interest payments and a loan commitment payment on some long term debt. Although the Bankruptcy Court held that the payments were made in the ordinary course of business, the trustee sought to avoid the transfers under Section 547(c)(2) because the payments were made on long term debt. The U.S. Supreme Court held that payments on long term debt were eligible for the ordinary course of business exception to the preferential transfer rules. **Union Bank v. Wolas, 112 S.Ct. 527 (1991), *rev'g and rem'g*, 921 F.2d 968 (9th Cir. 1990)**.

DISMISSAL. The debtors had filed a previous Chapter 12 case but had filed for voluntary dismissal after a creditor had filed for relief from the automatic stay. The debtors then filed the instant case in Chapter 11 within 180 days after dismissal of the Chapter 12 case. The court held that Section 109(g)(2) was mandatory in prohibiting the debtor from filing the second case within 180 days after the previous case because the case was voluntarily dismissed after a motion for relief from the automatic stay was filed. ***In re* Tooke, 133 B.R. 661 (Bankr. M.D. Fla. 1991)**.

EXEMPTIONS.

ANNUITY. The debtors owned an interest in a annuity paid to them as part of a settlement in an action for the death of the debtors' son. The court held that the annuity was eligible for an exemption under Ill. Rev. Stat. ch. 110, ¶ 12-101 only if the debtors could demonstrate that they were financially dependent upon their son at the time of his death and that the proceeds were reasonably necessary for their support. ***In re* Rigdon, 133 B.R. 460 (Bankr. S.D. Ill. 1991)**.

CHAPTER 7

REOPENING CASE. The debtors had filed a Chapter 7 case which, after the trustee filed a no asset report, was closed. The debtors sought to reopen the case to include the Farm Credit Bank as a creditor with a claim under a guaranty by the debtors of a debt of the debtors' corporation. The debtors claimed that the bank was omitted through inadvertence in that the debtors forgot about the guaranty. The court held that the case would be reopened to add the creditor because the debtors demonstrated sufficient excuse for the omission and the creditor failed to demonstrate any prejudice in a no asset case. The creditor was given additional time to object to any discharge. ***In re* Dodge, 133 B.R. 654 (W.D. Mo. 1991)**.

FEDERAL TAXATION

ABANDONMENT. The Chapter 11 trustee sought to abandon improved real estate to the debtor because a secured creditor had obtained relief from the automatic stay and the resulting foreclosure would produce substantial federal income tax liability for the estate. The court did not allow the abandonment because the property was not of inconsequential value to the estate. In addition, the court held that the abandonment would not have resulted in the debtor being taxed for any gain from the foreclosure. The court held that the abandonment itself would be a taxable event to the estate under *Yabro v. Comm'r, 737 F.2d 479 (5th Cir. 1984), cert. denied, 469 U.S. (1983)*. The court discussed the relationship of I.R.C. § 1398(f)(2) and (i) to demonstrate that a transfer of property to the debtor other than at the termination of the estate was a taxable event because only at the termination of the estate was the estate's taxable attributes also transferred to the debtor. In this case, the estate had access to substantial net operating loss carry forwards to offset the tax liability for the property which were not available to the debtor until the termination of the estate. Also, under *Commissioner v. Court Holding Co., 324 U.S. 331 (1945)*, the estate would be liable for the taxable gain because the abandonment was merely an attempt to shift the tax onto another. ***In re* A.J. Lane & Co., Inc., 133 B.R. 264 (Bankr. D. Mass. 1991)**. See also Harl, "Abandonment in Bankruptcy," 2 **Agric. L. Digest**, p. 17 (1990).

AUTOMATIC STAY. The debtors obtained a Chapter 7 discharge which included the discharge of federal income taxes for three taxable years. The debtors claimed their residence as exempt. The IRS had perfected tax liens against the debtors' residence for the taxes discharged and foreclosed against the house after the bankruptcy case was closed. The court held that the foreclosure was not barred by the automatic stay because the house was removed from the bankruptcy estate by the exemption and because the discharge of the debtors' personal tax liability did not affect the liens as against the property itself where the liens were not avoided in the bankruptcy case. ***In re* Millsaps, 133 B.R. 547 (Bankr. M.D. Fla. 1991)**.

CONTRACTS

BAILMENT. The plaintiff contracted with the defendant to pasture and care for the defendant's cattle in return for a share in the cattle proceeds. After the cattle were sold, the defendant refused to pay the plaintiff's share of the proceeds, claiming that the plaintiff's negligent care of the cattle resulted in losses of cattle and calves. The trial court found no evidence of negligence by the plaintiff and awarded the contracted for proceeds. The defendant argued on appeal that the burden was on the plaintiff to show that the losses were not due to the plaintiff's negligence, because the plaintiff had control of the cattle as bailee. The court held that because under the contract the defendant had the responsibility for losses, except losses from the pure negligence of the plaintiff, the defendant had the burden of showing negligence by the plaintiff. The court noted that the defendant had inspected the cattle several times and had not complained. **Tweeten v. Miller, 477 N.W.2d 822 (N.D. 1991)**.

PAROL EVIDENCE. The defendant induced the plaintiffs to purchase a neighboring cattle ranch by offering 100 percent financing of the purchase and operation of both ranches. The defendant also orally stated that the loans would be renewable over many years. However, the loan agreements were for one year each with changing terms and requirements each year. After the defendant threatened to foreclose unless additional security was provided or payments were made, the plaintiffs filed suit for breach of contract. The defendant argued that evidence of any oral agreement to provide long term financing was barred by the parol evidence rule in that the terms of the financing were contained in each annual loan agreement. The court held that parol evidence was allowable because the written agreements did not contain all aspects of the loan agreements because the agreements were for one year but provided no terms for payment which could have been reasonably met by the plaintiffs. **Siegner v. Interstate Prod. Credit Ass'n, 820 P.2d 20 (Or. Ct. App. 1991)**.

FEDERAL AGRICULTURAL PROGRAMS

ADMINISTRATIVE PROCEDURE. Prior to the debtors' filing for bankruptcy, the county ASCS committee ruled that the debtors were not eligible for disaster payments for loss of a rice crop because the loss occurred as a result of the debtors' poor management from failure to flush the fields. The administrative appeals continued but decisions adverse to the debtor were made by the county and state ASCS offices after the bankruptcy filing. The DASCO ruled that the later decisions were void for violation of the automatic stay. The debtors sought adjudication of their rights to the disaster payments in the bankruptcy case and the ASCS sought dismissal because the debtors had not yet completed the administrative appeal process. The court held

that the debtors were excepted from the administrative process requirement because the later adverse decisions demonstrated the futility of continuing the administrative appeal and because the debtors would be financially injured by the lengthy process. ***In re* Winchester, 133 B.R. 368 (Bankr. N.D. Miss. 1991)**.

COOPERATIVES. The CCC has adopted as final regulations providing minimum financial requirements for cooperatives for participation in the price support program on behalf of members growing canola, flaxseed, mustard seed, rapeseed, safflower and sunflower seed. **57 Fed. Reg. 1369 (Jan. 14, 1992)**.

CROP INSURANCE. The FCIC has issued interim regulations extending the contract change date to February 15, 1992 for the corn, grain sorghum and soybean endorsements. **57 Fed. Reg. 2007 (Jan. 17, 1992)**.

GRAIN INSPECTION. The FGIS has adopted as final regulations incorporating by reference the Grain Moisture Meters Code and General Code of the National Institute of Standards and Technology Handbook 44. **57 Fed. Reg. 2673 (Jan. 23, 1992)**.

JURISDICTION. The plaintiffs were denied status as several "persons" for purposes of the $50,000 limitation on federal farm program payments for 1987 and appealed the denial through DASCO before filing the present case. The plaintiffs sought declaratory relief that they were entitled to the original determination that they were seven "persons" for purposes of the payment limitations. The USDA sought dismissal of the suit based on improper jurisdiction because the plaintiffs sought monetary damages, thus placing jurisdiction, under the Tucker Act, with the Claims Court. The court held that although the relief sought by the plaintiffs would result in money being paid to the plaintiff by the defendant, the claim was not for monetary damages, defined by the court to mean compensation for injury, but for monetary relief; therefore, the District Court had jurisdiction over the claim. **Peterson Farms I v. Madigan, Civ. Action No. 91-2340 (D. D.C. 1991)** (case provided by Alexander Pires, counsel for plaintiffs). See also *Vandervelde v. Yeutter, 774 F. Supp. 645 (D. D.C. 1991)* p. 19 *supra*.

MEAT AND POULTRY INSPECTION. The plaintiff contracted trichinosis after eating pork sold by the defendant and sued for breach of warranty and negligence. The court held that federal inspection and labeling requirements preempted state law requirements which were "in addition to or different than" the federal requirements; therefore, the plaintiff's state court action for failure to inspect the meat for trichinae spiralis or to warn the plaintiff about the need to sufficiently cook the pork was preempted by the federal requirements. **Kircos v. Holiday Food Center, Inc., 477 N.W.2d 130 (Mich. Ct. App. 1991)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION. The taxpayer established a unitrust with the taxpayer as lifetime beneficiary and the taxpayer's spouse as second lifetime beneficiary. The beneficiaries were to receive the net income of the trust plus 10 percent of the annual value of the trust assets. After the death of both beneficiaries, the trust assets passed in fee to charitable organizations. The taxpayer had the power to change the general trustees but not the independent trustee, unless the independent trustee was removed by an outside cause. The taxpayer had the power to revoke by will the spouse's interest in the trust, to change the charitable beneficiaries and to cause trust assets to be transferred to the charitable beneficiaries. The IRS ruled that the trust was eligible for the charitable deduction as a charitable unitrust. If the taxpayer did not revoke the spouse's interest in the trust, the portion passing to the spouse would be eligible for the marital deduction. **Ltr. Rul. 9202033, Oct. 16, 1991**.

FAMILY ESTATE TRUSTS. The taxpayers were husband and wife and the wife transferred her share of marital property to the husband who then transferred their home, two family businesses and some real estate to a trust with the taxpayers as beneficiaries. The court held that rent paid to the trust was not deductible because the taxpayers retained the beneficial use of the property and both were grantors of the trust. **Balis v. Comm'r, T.C. Memo. 1992-34**.

GENERATION SKIPPING TRANSFER TAX. The decedent bequeathed property to a daughter, grandchildren and great-grandchildren. The grandchildren executed disclaimers of their interests in the decedent's estate to the extent of a pecuniary amount equal to the total value of property treated as a direct skip reduced by the maximum amount which passed free of GSTT after taking into account the GST exemption and any reductions which would reduce the inclusion ratio. The great-grandchildren also executed disclaimers such that the interests of the grandchildren and great-grandchildren would pass to the decedent's daughter by intestacy. The IRS ruled that the disclaimers were effective and that the remaining amounts passing to the grandchildren were not subject to GSTT. **Ltr. Rul. 9203028, Oct. 21, 1991**.

GIFT. Over four taxable years, the donor executed and recorded deeds transferring five parcels of farm land to the donor's son. The donor had signed affidavits characterizing the transfers as gifts and presented no evidence of consideration from the son for the transfers. The court held that the transfers were gifts. **Warda v. Comm'r, T.C. Memo. 1992-43**.

INSTALLMENT PAYMENT OF ESTATE TAX. The decedent's estate elected to pay in installments that portion of the federal estate tax attributable to the decedent's interest in closely held businesses. Stock in those businesses were to be distributed to a trust for the decedent's children who had the power at any time to require distribution of their share of trust assets. Two children made such requests immediately upon funding of the trust. The IRS ruled that the distributions of the stock to the trust and to the children were not distributions causing acceleration of the installment payment of federal estate tax. **Ltr. Rul. 9202017, Oct. 10, 1991**.

MARITAL DEDUCTION. In filing Form 706 for an estate, the executor claimed a marital deduction for a trust eligible as QTIP and identified the trust but otherwise failed to properly complete Schedule M. The executor filed an amended Schedule M which properly made the election and filed for an extension of time to make the QTIP election.

The IRS ruled that good cause and intent to originally make the election was shown and the extension was granted. **Ltr. Rul. 9202004, Aug. 22, 1991; Ltr. Rul. 9202006, Sept. 30, 1991; Ltr. Rul. 9203001, Sept. 26, 1991; Ltr. Rul. 9203007, Sept. 30, 1991; Ltr. Rul. 9203030, Oct. 22, 1991**.

POWER OF APPOINTMENT. At the decedent's death, the decedent was the sole trustee of a trust in which the decedent was the sole lifetime beneficiary. The trustee had the power to distribute trust corpus to the beneficiary for "maintenance, support and comfort, in order to defray expenses incurred by reason of sickness, accidents and disability. . ." The IRS ruled that although a trustee's discretion to distribute trust corpus for the beneficiary's "comfort" was not subject to an ascertainable standard, the discretion in the decedent's trust was limited by distributions for illness or disability and therefore was subject to an ascertainable standard. Thus, the decedent's power to distribute trust corpus was not a general power of appointment over trust corpus. **Ltr. Rul. 9203047, Oct. 23, 1991**.

FEDERAL INCOME TAXATION

BAD DEBT. **Echols v. Comm'r, 92-1 U.S. Tax Cas. (CCH) ¶ 50,046 (5th Cir. 1991),** ***aff'g on reh'g,*** **935 F.2d 703 (5th Cir. 1991)**, see **ALD**, Vol 2, p. 142.

CAPITAL COSTS. The taxpayer operated an off-site warehouse in which bulk goods were stored before separated to fill orders from customers. The taxpayer claimed that a majority of the occupancy expenses was derived from the selling, repacking and distribution of the goods for orders from customers; therefore, the costs were currently deductible. The IRS ruled that occupancy costs, listed in Temp. Treas. Reg. § 1.263A-1T(d)(3)(ii)(C)(2), incurred by the taxpayer in an off-site warehouse were required to be capitalized. **Ltr. Rul. 9202001, Nov. 4, 1991**.

C CORPORATIONS

REORGANIZATION. A cattle ranch corporation was reorganized into three corporations in order to avoid disputes among the shareholders. The IRS ruled that the reorganization qualified as a "type D," Section 368(a)(1)(D) reorganization with carryover of basis and holding periods for the assets. **Ltr. Rul. 9201013, Oct. 1, 1991**.

COOPERATIVES. Under Rev. Rul. 72-602, 1972-2 C.B. 510, the IRS had ruled that a cooperative which did less than 50 percent in value of business with members was not operating on a cooperative basis. The Eighth Circuit and the Claims Court have held that the ruling was invalid and that the determination must be based on all facts and circumstances. See *Conway County Farmers Ass'n v. Comm'r, 588 F.2d 592 (8th Cir. 1978), rev'g 78-1 U.S. Tax Cas. (CCH) ¶ 9334 (E.D. Ark. 1978); Columbus Fruit & Vegetable Coop. Ass'n, Inc. v. U.S., 7 Cls. Ct. 561 (1985).* The IRS announced that it will no longer follow Rev. Rul. 72-602 and will apply an all facts and circumstances test for determining whether a cooperative is operating on a cooperative basis for federal income tax purposes. **AOD 1991-018**.

The taxpayer was a nonexempt marketing cooperative which established accounts receivable from its patrons to the extent of a patronage loss carryforward. The account receivables were offset against qualified per unit retains. The IRS ruled that the account receivables were patronage sourced income to the cooperative which could be used to offset the patronage loss carryforward of the cooperative. The redemption or cancellation of the qualified per unit retains was not income to the cooperative. **Ltr. Rul. 9202026, Oct. 11, 1991**.

COURT AWARDS AND SETTLEMENTS. The court held that back pay awarded in settlement of a racial discrimination suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. is not excludible from income as damages received for personal injury under I.R.C. § 104(a)(2). **Sparrow v. Comm'r, 949 F.2d 434 (D.C. Cir. 1991)**.

EMPLOYEE BENEFITS. The IRS has adopted as final amendments to the employee fringe benefits regulations which provide guidance for tax treatment of transportation provided by an employer to or from an employee's workplace due to unsafe conditions surrounding the workplace or residence and increase the dollar amount of the de minimis exclusion for public transit passes for commuting on public transit systems. The amendments were effective July 1, 1991. **57 Fed. Reg. 1868 (Jan. 16, 1992)**.

The IRS has announced the inflation adjusted limitations on benefits under qualified defined benefit pensions plans as $112,221, the maximum limitation for the annual benefit under Section 415(b)(1)(A), and $30,000 for defined contribution plans. **IR 92-3, Jan. 17, 1992**.

ESTIMATED TAXES. Under the Emergency Unemployment Compensation Act of 1991, for 1992 taxpayers with adjusted gross income over $75,000 and an increase over 1991 adjusted gross income of $40,000 ($20,000 for single filers), the minimum estimated taxes to be paid is 90 percent of the 1992 tax liability. The 100 percent of the 1991 taxes minimum is barred to such taxpayers but remains available to all other individual taxpayers. Not included in the $40,000/20,000 increase is gain from an involuntary conversion and sale of a principal residence and pass through items from an S corporation or partnership in which the taxpayer owns less than 10 percent of the capital or profits. **Pub. L. No. 102-164, Sec. 430 (Nov. 15, 1991)**.

HOBBY LOSSES. The taxpayer was a full time orthodontist who purchased show horses and who deducted the expenses related to the horses as a business expense. The court held that the expenses were not deductible because the taxpayer made no informed business decisions about the economic viability of the activity, the horses were used primarily for the horseback riding pleasure of the taxpayer's daughter and the taxpayer was not actively involved in the show horse activity. **Rivioli v. Comm'r, T.C. Memo. 1992-26**.

INVOLUNTARY CONVERSION. Farm land operated as a tenant farm was owned by a corporation with a partnership and another corporation as shareholders. Before the parent corporation was liquidated, the city informed the corporation of the city's intent to purchase the land. The

city needed and obtained an amendment to the state constitution allowing it to annex the land. After the corporation was liquidated, the city deposited the purchase money funds in a court registry with the current owners, the former shareholders of the liquidated corporation, eligible to receive the funds, subject to reimbursement if the purchase was not completed. The IRS ruled that at the time the corporation was liquidated, the land was not under a threat of condemnation because the city needed a constitutional amendment to annex the land. The taxable year that gain was realized from the sale of the land was the year the city deposited the funds in the court registry and all co-owners could receive funds, subject to reimbursement. The partnership co-owner could elect to defer the gain by investing in like-kind property within three years of the taxable year that gain was realized. **Ltr. Rul. 9203022, Oct. 21, 1991**.

LEASED PROPERTY. The IRS has issued proposed regulations adopting the temporary regulations involving leasing of luxury automobiles and other listed property. **57 Fed. Reg. 2862 (Jan. 24, 1992)**.

PASSIVE ACTIVITY LOSSES. The taxpayer incurred passive activity losses in 1987 in excess of the amount allowed as a deduction in 1987. The taxpayer claimed that the losses not deductible in 1987 could be carried back to 1986, prior to enactment of the passive activity loss limitation. The IRS ruled that because the amount of passive activity losses not deductible in 1987 was not included in calculating net operating losses under I.R.C. § 172, the nondeductible passive activity losses could not be carried back to a previous taxable year, but could be only carried forward to offset future passive activity income. **Ltr. Rul. 9152004, Aug. 23, 1991**.

RETIREMENT PLANS. The taxpayer, the sole shareholder of a professional corporation, established a pension and profit sharing plan with the taxpayer as sole beneficiary. The taxpayer borrowed several times from the plans and secured the loans with mortgages on real property, but the mortgages were not recorded for several months after the loans. The court held that the loans were not prohibited transactions under I.R.C. § 4975 for failure to be adequately secured because no harm was caused by the delay in recording the mortgages. **Ahlberg v. U.S., 92-1 U.S. Tax Cas. (CCH) ¶ 50,039 (D. Minn. 1991)**.

RETURNS. The IRS has announced that Social Security publication 31-011 incorrectly stated that tax identification numbers may be listed without hyphens. **Ann. 92-11, I.R.B. 1992-4, 34**.

The IRS has announced that instruction E for Form 1139 is incorrect in that the instruction should state that the dividends received deduction is computed with regard to the limitation on the aggregate amount of deductions under Section 246(b) and the dividends paid deduction is computed without regard to the taxable income limitation under Section 247(a)(1)(B). **Ann. 92-7, I.R.B. 1992-3, 36**.

The IRS has announced that line D of line 7 of the worksheet on page 10 of the 1991 Form 8810 instructions is incorrect and should state "If 0 or less, enter 0 here and on line E." **Ann. 92-8, I.R.B. 1992-3, 36**.

The IRS has announced that new Form 8827, Credit for Prior Year Minimum Tax, has been issued for corporations to figure any minimum tax credit for alternative minimum tax incurred in prior tax years and for carryforward to future years. The new form replaces Form 8801. **Ann. 92-9, I.R.B. 1992-3, 36**.

SAFE HARBOR INTEREST RATES

FEBRUARY 1992

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	4.64	4.59	4.56	4.55
110% AFR	5.11	5.05	5.02	5.00
120% AFR	5.59	5.51	5.47	5.45
		Mid-term		
AFR	6.35	6.25	6.20	6.17
110% AFR	7.00	6.88	6.82	6.78
120% AFR	7.64	7.50	7.43	7.39
		Long-term		
AFR	7.33	7.20	7.14	7.09
110% AFR	8.08	7.92	7.84	7.79
120% AFR	8.83	8.64	8.55	8.49

S CORPORATIONS

ADMINISTRATIVE ADJUSTMENTS. After a final S corporation administrative adjustment was issued and not disputed by the corporation, the surviving spouse of a shareholder filed a petition for readjustment in which relief was requested under the innocent spouse defense. The court held that it had no jurisdiction because the innocent spouse defense was not an enumerated S corporation item adjudicable in a readjustment proceeding. **Dynamic Energy, Inc. v. Comm'r, 98 T.C. No. 5 (1992)**.

CONSTRUCTIVE DIVIDENDS. The spouse of the sole shareholder received payments as salary and was allowed use of the automobile owned by the corporation. The court held that the payments were not deductible as wage payments where the corporation provided no proof of services performed by the spouse for the corporation. The payments and automobile use were held to be constructive dividends to the shareholder spouse. **Alexander Shokai, Inc. v. Comm'r, T.C. Memo. 1992-41**.

STATUTE OF LIMITATIONS. In 1979 the taxpayer's S corporation claimed a loss deduction from the corporation's share of a partnership's losses. The taxpayer claimed a share of the corporation's loss on the taxpayer's individual tax return. The taxpayers signed Form 872-A extending the statute of limitations for assessments on their individual return but no extension was made for the S corporation's return. After the statute of limitations had run on the corporation's return but during the individual return extension, the IRS disallowed the partnership loss deduction and assessed the taxpayers for their share of the disallowed losses reported through the S corporation. The taxpayers argued that the statute of limitations had run on the S corporation losses. The court held that the statute of limitations on S corporation returns barred only assessments of tax against the corporation, although the court failed to identify what taxes are assessable against an S corporation, a flow-through non-taxed entity. The court noted that its holding was contrary to *Kelly v. Comm'r, 877 F.2d 756 (9th Cir. 1989)*. **Bufferd v. Comm'r, 92-1 U.S. Tax Cas. ¶ 50,031 (2d Cir. 1992), *aff'g*, T.C. Memo. 1991-170**.

TAX BENEFIT RULE. While the corporation was a C corporation, the corporation claimed an interest deduction for accrued but unpaid interest. After the corporation became an

S corporation, the unpaid interest was declared unpayable and the corporation reported the amount deducted as recovered interest payments but instead of passing the recovered amount on to shareholders, the S corporation merely offset the income by an accounting entry. The corporation argued that because the interest expense was reported when the corporation was not a pass through entity, the recovery item should not be passed through to the S corporation shareholders. The IRS ruled that the corporation's position had no support in statute or cases and that recovery interest income was to be passed through to shareholders. **Ltr. Rul. 9202002, May 22, 1991**.

WAGES. In Rev. Rul. 91-26, 1991-1 C.B. 184, the IRS ruled that premiums paid by an S corporation for employer -provided accident and health insurance for 2 percent shareholder-employees were wages for income tax withholding purposes. The IRS has provided a clarification that such premiums may also be wages for social security and Medicare tax unless the payments were made under a plan or system for employees and their dependents generally or for a class of employees and their dependents. **Ann. 92-16, I.R.B. 1992-5, 53**.

TAX LIENS. The IRS has adopted as final regulations providing procedures for filing civil actions for knowing or negligent failure to release a tax lien. **57 Fed. Reg. 3537 (Jan. 30, 1992)**.

MORTGAGES

RELEASE. The defendants were the parents of several children who wanted to purchase a farm. The plaintiff bank loaned the money for the purchase by executing two loans, one which provided funds for part of the purchase price and one which provided funds for payment of a loan on the parents' farm which was used as security for that loan. A second loan was made for the remainder of the purchase price and was secured by the purchased farm. After the children defaulted on the second loan, the children deeded the farm to the bank and the bank executed a release. The court found that, although the release had several references to the second loan, the release also contained provisions which could have been intended to release all borrowers on both loans. The court court reversed the trial court's summary judgment for the defendants and remanded the case for evidentiary finding to determine the intent of the parties in the release. **Farm Credit Bank of St. Louis v. Whitlock, 581 N.E.2d 664 (Ill. 1991)**.

PRODUCTS LIABILITY

CULTIVATOR. The plaintiff was injured when the plaintiff's truck struck a cultivator manufactured by the defendant while the cultivator was being towed on a highway. The plaintiff sued under strict liability and negligence, arguing that the cultivator was defective because the extension arms were too long for highway transport and because the cultivator lacked devices to warn traffic that the arms extended into the oncoming traffic lane. The court affirmed summary judgment for the manufacturer because the width of the cultivator was merely a condition which made the accident possible through the conduct of the operator and plaintiff. **West v. Deere & Co., 582 N.E.2d 685 (Ill. 1991)**.

SECURED TRANSACTIONS

CONTINUATION. The FmHA perfected a security interest in the debtor's crops and farm equipment and included in the financing statement a description of the land on which the collateral crops were grown. This security interest lapsed by passage of time and the FmHA filed a continuation which did not contain a description of the land but referred to the earlier financing statement by record number. Another secured creditor had perfected a security interest in the debtor's crops after concluding that the FmHA second security interest was not perfected because the continuation filing did not contain a description of the land on which the collateral crops were grown. The court held that the reference back to the first FmHA financing statement by record number was sufficient to include the land description and the FmHA security interest had priority. ***In re* Heger, 133 B.R. 612 (Bankr. S.D. Ohio 1991)**.

FEDERAL FARM PRODUCTS RULE. The plaintiff bank had a perfected security interest in milk produced by the debtor and had executed an assignment with a dairy under which the dairy submitted a portion of the proceeds directly to the bank. The debtor switched dairies and the new dairy refused to make the milk assignment and to pay the proceeds to the bank even though the bank sent written notice of its security interest to the dairy. The court held that the bank had complied with the notice requirements of 7 U.S.C. § 1631(e); therefore, the dairy took the milk received after the notice subject to the bank's security interest. The dairy was also held to have converted the milk proceeds subject to the security interest where the debtor failed to make payments on the loans. **Farm Credit Bank v. F & A Dairy, 477 N.W.2d 357 (Wis. Ct. App. 1991)**.

STATE REGULATION OF AGRICULTURE

AFLATOXIN. Corn stored in the plaintiff's elevator was found to be contaminated with aflatoxin and the state Dept. of Natural Resources issued an emergency order to the plaintiff to dispose of the corn. The plaintiff submitted several proposed methods for disposal but they were rejected. The plaintiff requested a hearing on the disposal order but the DNR refused to treat a hearing to stay the order as a hearing on the merits of the order. The plaintiff sought judicial review at this point although at least one more administrative hearing was allowed. The court held that the courts could not review the DNR order until the plaintiff had exhausted all administrative review. **Pruess Elevator v. Iowa Dept. of Nat. Resources., 477 N.W.2d 675 (Iowa 1991)**.

AGRICULTURAL LAW DIGEST
P.O. BOX 5444
MADISON, WI 53705-5444

BORROWER'S RIGHTS. As part of a settlement of debt, the plaintiffs conveyed farm land to two banks as equal tenants in common. The one bank conveyed its one-half interest in the land to the other bank. The plaintiffs argued that under Minn. Stat. § 500.24, the one-half interest should have been offered first to them. The court held that Section 500.24 did not govern transfers between co-owners of farm land transferred from a farm debtor and that the bank was not required to first offer the one-half interest to the prior farm owners. **Buer v. Atwater State Bank, 477 N.W.2d 782 (Minn. Ct. App. 1991)**.

STATE TAXATION

PASTURE. The plaintiff owned pasture land used to raise beef cattle. The county tax district appraised all pasture land in the county under one category and valued the land at $200 per acre, including the plaintiff's land. The plaintiff argued that the valuation was excessive and unequal in that the plaintiff's pasture was all native grass. The court held that the appraisal of all county pasture land under one valuation was permitted by the State Property Tax Board guidelines because the native grass pastures composed less than 2 percent of the total pasture land. The court also upheld the valuation because the plaintiff failed to demonstrate any harm in that the plaintiff failed to demonstrate a more accurate valuation. **Rusk Indus. v. Hopkins County, 818 S.W.2d 111 (Tex. Ct. App. 1991)**.

VETERINARIANS

STANDARD OF PROOF. The Iowa Board of Veterinary Medicine had revoked the defendant's veterinarian license for falsification of test records, failure to supervise employees in surgical procedures, and violation of food and drug regulations. The administrative board made its finding based on a preponderance of the evidence standard, but a reviewing state district court held that the proper standard was "clear and convincing evidence." The court held that the board's finding need be made under the preponderance of the evidence standard. **Boswell v. Bd. of Vet. Medicine, 477 N.W.2d 366 (Iowa 1991)**.

CITATION UPDATES

Uri v. Comm'r, 949 F.2d 371 (10th Cir. 1991) (S corporation shareholder basis) see p.7 *supra*.

ISSUE INDEX